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**UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA**

| | | |
|---------------------------------------|---|-------------------------------------|
| CARNEISHA FORNEY, individually |) | Case No. |
| and on behalf of all others similarly |) | |
| situated, |) | <u>CLASS ACTION</u> |
| |) | |
| Plaintiff, |) | COMPLAINT FOR VIOLATIONS |
| |) | OF: |
| vs. |) | |
| |) | 1. NEGLIGENT VIOLATIONS |
| COLONY BRANDS, INC., and DOES |) | OF THE TELEPHONE |
| 1 through 10, inclusive, |) | CONSUMER PROTECTION |
| |) | ACT [47 U.S.C. §227 ET |
| |) | SEQ.] |
| Defendant. |) | 2. WILLFUL VIOLATIONS |
| |) | OF THE TELEPHONE |
| |) | CONSUMER PROTECTION |
| |) | ACT [47 U.S.C. §227 ET |
| |) | SEQ.] |
| |) | 3. VIOLATIONS OF THE |
| |) | ROSENTHAL FAIR DEBT |
| |) | COLLECTION PRACTICES |
| |) | ACT [CAL. CIV. CODE |
| |) | §1788 ET SEQ.] |
| |) | |
| |) | <u>DEMAND FOR JURY TRIAL</u> |

Plaintiff CARNEISHA FORNEY (“Plaintiff”), individually and on behalf of
all others similarly situated, alleges the following against Defendant COLONY

BRANDS, INC. upon information and belief based upon personal knowledge:

INTRODUCTION

1. Plaintiff's Class Action Complaint is brought pursuant to the Telephone Consumer Protection Act, 47 U.S.C. § 227 et seq. ("TCPA").

2. Plaintiff, individually, and on behalf of all others similarly situated, brings this Complaint for damages, injunctive relief, and any other available legal or equitable remedies, resulting from the illegal actions of Defendant in negligently, knowingly, and/or willfully contacting Plaintiff no Plaintiff's cellular telephone, thereby the TCPA, 47 U.S.C. § 227. Plaintiff alleges as follows upon personal knowledge as to herself and her own acts and experiences, and, as to all other matters, upon information and belief, including investigation conducted by his attorneys.

3. In addition to Plaintiff's Class Claims, Plaintiff also brings an action for damages as an individual consumer for Defendant's violations the Rosenthal Fair Debt Collection Practices Act, Cal Civ. Code §1788, et seq. (hereinafter "RFDCPA") which prohibits debt collectors from engaging in abusive, deceptive, and unfair practices.

JURISDICTION AND VENUE

4. Jurisdiction is proper under 28 U.S.C. § 1332(d)(2) because Plaintiff, a resident of California, seeks relief on behalf of a Class, which will result in at least one class member belonging to a different state than that of Defendant, a Wisconsin company that does business in California and other States. Plaintiff also seeks up to \$1,500.00 in damages for each call in violation of the TCPA, which, when aggregated among a proposed class in the thousands, exceeds the \$5,000,000.00 threshold for federal court jurisdiction. Therefore, both diversity jurisdiction and the damages threshold under the Class Action Fairness Act of 2005 ("CAFA") are present, and this Court has jurisdiction.

1 5. Alternatively, this Court has jurisdiction over Plaintiff's TCPA
2 claims pursuant to 28 U.S.C. § 1331.

3 6. Ancillary to Plaintiff's TCPA claims, this Court has jurisdiction
4 pursuant to 28 U.S.C. § 1367(a) over Plaintiff's claims arising under the RFDCPA,
5 Cal. Civ. Code § 1788, *et seq.* because they arise under the same case or
6 controversy.

7 7. Venue is proper in the United States District Court for the Central
8 District of California pursuant to 28 U.S.C. § 1391(b)(2) because Defendant does
9 business within the State of California and Plaintiff resides within this District.

10 **PARTIES**

11 8. Plaintiff, CARNEISHA FORNEY ("PLAINTIFF"), is a natural
12 person residing in Los Angeles County in the state of California, and is a "person"
13 as defined by 47 U.S.C. § 153(39). Furthermore, Plaintiff is a "debtor" as defined
14 by the RFDCPA, Cal. Civ. Code § 1788.2(h).

15 9. At all relevant times herein, DEFENDANT, COLONY BRANDS,
16 INC. ("DEFENDANT"), is retail company engaged in collection activity in
17 connection with debts allegedly owed to it, and is a "person" as defined by 47
18 U.S.C. § 153(39). Furthermore, Defendant, at all relevant times herein, was a
19 company engaged, by use of the mails and telephone, in the business of collecting
20 an alleged debt from PLAINTIFF which qualifies as a "consumer debt" as defined
21 by the RFDCPA, Cal. Civ. Code § 1788.2(f). DEFENDANT regularly attempts to
22 collect debts in the ordinary course of its business, and therefore is a "debt
23 collector" as defined by the RFDCPA, Cal. Civ. Code § 1788.2(c).

24 10. Defendants acted through their agents, employees, officers, members,
25 directors, heirs, successors, assigns, principals, trustees, sureties, subrogees,
26 representatives, and insurers.
27
28

11. The above named Defendant, and its subsidiaries and agents, are collectively referred to as “Defendants.” The true names and capacities of the Defendants sued herein as DOE DEFENDANTS 1 through 10, inclusive, are currently unknown to Plaintiff, who therefore sues such Defendants by fictitious names. Each of the Defendants designated herein as a DOE is legally responsible for the unlawful acts alleged herein. Plaintiff will seek leave of Court to amend the Complaint to reflect the true names and capacities of the DOE Defendants when such identities become known.

12. Plaintiff is informed and believes that at all relevant times, each and every Defendant was acting as an agent and/or employee of each of the other Defendants and was acting within the course and scope of said agency and/or employment with the full knowledge and consent of each of the other Defendants. Plaintiff is informed and believes that each of the acts and/or omissions complained of herein was made known to, and ratified by, each of the other Defendants.

FACTUAL ALLEGATIONS – TCPA

13. Beginning as early as May of 2015, Defendant contacted Plaintiff on her cellular telephone number ending in -2152, in an effort to collect an alleged debt owed from Plaintiff.

14. Defendant called Plaintiff from telephone numbers confirmed to belong to Defendant, including without limitation (877) 621-3550.

15. In its efforts to collect the alleged debt owed from Plaintiff, Defendant used an “automatic telephone dialing system,” as defined by 47 U.S.C. § 227(a)(1) to place its daily calls to Plaintiff seeking to collect an alleged debt owed.

16. Defendant’s calls constituted calls that were not for emergency purposes as defined by 47 U.S.C. § 227(b)(1)(A).

1 17. Defendant's calls were placed to telephone number assigned to a
2 cellular telephone service for which Plaintiff incurs a charge for incoming calls
3 pursuant to 47 U.S.C. § 227(b)(1).

4 18. During all relevant times, Defendant did not possess Plaintiff's "prior
5 express consent" to receive calls using an automatic telephone dialing system or
6 an artificial or prerecorded voice on his cellular telephone pursuant to 47 U.S.C. §
7 227(b)(1)(A).

8 19. Furthermore, Plaintiff orally revoked any and all consent to be
9 contacted using an automated telephone dialing system, to the extent any ever
10 existed.

11 20. Despite Plaintiff's oral revocation of consent to be called, Defendant
12 continued to call Plaintiff.

13 21. Plaintiff alleged upon information and belief, including without
14 limitation her experience of being called by Defendant despite her explicit
15 revocation of consent to be called, that Defendant failed to put in place reasonable
16 policies and procedures to avoid violation of the TCPA.

17
18 **FACTUAL ALLEGATIONS – RFDCPA**

19 22. In addition to the facts pled above, at various times prior to the filing
20 of the instant complaint, including within one year preceding the filing of this
21 complaint, DEFENDANT contacted PLAINTIFF in an attempt to collect an
22 alleged outstanding debt.

23 23. Beginning May of 2015, Plaintiff began receiving numerous calls
24 from Defendant.

25 24. Each of these calls were made to Plaintiff in connection with
26 collection on an alleged debt.

27 25. On several occasions, Plaintiff told Defendant to stop calling her, but
28 Defendant continued to call.

1 26. The RFDCPA, Cal. Civ. Code § 1788.17 mandates that every debt
2 collector collecting or attempting to collect a consumer debt shall comply with the
3 Federal Fair Debt Collection Practices Act (“FDCPA”), 15 U.S.C. §§ 1692b
4 through 1692j and be subject to the remedies in the FDCPA, 15 U.S.C. § 1692k.

5 27. DEFENDANT’S conduct violated the RFDCPA in multiple ways,
6 including but not limited to:

- 7 a) Causing a telephone to ring repeatedly or continuously to annoy
8 Plaintiff (Cal. Civ. Code § 1788.11(d));
9
10 b) Communicating, by telephone or in person, with Plaintiff with such
11 frequency as to be unreasonable and to constitute an harassment to
12 Plaintiff under the circumstances (Cal. Civ. Code § 1788.11(e));
13
14 c) Causing Plaintiffs telephone to ring repeatedly or continuously with
15 intent to harass, annoy or abuse Plaintiff (15 U.S.C. § 1692d(5));
16
17 d) Communicating with Plaintiff at times or places which were known
18 or should have been known to be inconvenient for Plaintiff (15
19 U.S.C. § 1692c(a)(1)); and
20
21 e) Engaging in conduct the natural consequence of which is to harass,
22 oppress, or abuse Plaintiff (15 U.S.C. § 1692d)).
23
24

25 28. As a result of the above violations of the RFDCPA, Plaintiff suffered
26 and continues to suffer injury to PLAINTIFF’S feelings, personal humiliation,
27 embarrassment, mental anguish and emotional distress, and DEFENDANT is
28 liable to PLAINTIFF for PLAINTIFF’S actual damages, statutory damages, and
costs and attorney’s fees.

CLASS ACTION ALLEGATIONS

29 29. Plaintiff brings this action individually and on behalf of all others
similarly situated, as a member of the proposed class (hereafter “The Class”)
defined as follows:

1 All persons within the United States who received any
2 telephone calls from Defendant to said person's cellular
3 telephone made through the use of any automatic
4 telephone dialing system or an artificial or prerecorded
5 voice and such person had not previously consented to
6 receiving such calls within the four years prior to the
filing of this Complaint

7 30. Plaintiff represents, and is a member of, The Class, consisting of All
8 persons within the United States who received any collection telephone calls from
9 Defendant to said person's cellular telephone made through the use of any
10 automatic telephone dialing system or an artificial or prerecorded voice and such
11 person had not previously not provided their cellular telephone number to
12 Defendant within the four years prior to the filing of this Complaint.

13 31. Defendant, its employees and agents are excluded from The Class.
14 Plaintiff does not know the number of members in The Class, but believes the Class
15 members number in the thousands, if not more. Thus, this matter should be
16 certified as a Class Action to assist in the expeditious litigation of the matter.

17 32. The Class is so numerous that the individual joinder of all of its
18 members is impractical. While the exact number and identities of The Class
19 members are unknown to Plaintiff at this time and can only be ascertained through
20 appropriate discovery, Plaintiff is informed and believes and thereon alleges that
21 The Class includes thousands of members. Plaintiff alleges that The Class
22 members may be ascertained by the records maintained by Defendant.

23 33. Plaintiff and members of The Class were harmed by the acts of
24 Defendant in at least the following ways: Defendant illegally contacted Plaintiff
25 and Class members via their cellular telephones thereby causing Plaintiff and Class
26 members to incur certain charges or reduced telephone time for which Plaintiff and
27 Class members had previously paid by having to retrieve or administer messages
28 left by Defendant during those illegal calls, and invading the privacy of said

1 Plaintiff and Class members.

2 34. Common questions of fact and law exist as to all members of The
3 Class which predominate over any questions affecting only individual members of
4 The Class. These common legal and factual questions, which do not vary between
5 Class members, and which may be determined without reference to the individual
6 circumstances of any Class members, include, but are not limited to, the following:

- 7 a. Whether, within the four years prior to the filing of this
8 Complaint, Defendant made any collection call (other than a
9 call made for emergency purposes or made with the prior
10 express consent of the called party) to a Class member using
11 any automatic telephone dialing system or any artificial or
12 prerecorded voice to any telephone number assigned to a
13 cellular telephone service;
- 14 b. Whether Plaintiff and the Class members were damages
15 thereby, and the extent of damages for such violation; and
- 16 c. Whether Defendant should be enjoined from engaging in such
17 conduct in the future.

18 35. As a person that received numerous collection calls from Defendant
19 using an automatic telephone dialing system or an artificial or prerecorded voice,
20 without Plaintiff's prior express consent, Plaintiff is asserting claims that are
21 typical of The Class.

22 36. Plaintiff will fairly and adequately protect the interests of the members
23 of The Class. Plaintiff has retained attorneys experienced in the prosecution of
24 class actions.

25 37. A class action is superior to other available methods of fair and
26 efficient adjudication of this controversy, since individual litigation of the claims
27 of all Class members is impracticable. Even if every Class member could afford
28 individual litigation, the court system could not. It would be unduly burdensome

1 to the courts in which individual litigation of numerous issues would proceed.
2 Individualized litigation would also present the potential for varying, inconsistent,
3 or contradictory judgments and would magnify the delay and expense to all parties
4 and to the court system resulting from multiple trials of the same complex factual
5 issues. By contrast, the conduct of this action as a class action presents fewer
6 management difficulties, conserves the resources of the parties and of the court
7 system, and protects the rights of each Class member.

8 38. The prosecution of separate actions by individual Class members
9 would create a risk of adjudications with respect to them that would, as a practical
10 matter, be dispositive of the interests of the other Class members not parties to such
11 adjudications or that would substantially impair or impede the ability of such non-
12 party Class members to protect their interests.

13 39. Defendant has acted or refused to act in respects generally applicable
14 to The Class, thereby making appropriate final and injunctive relief with regard to
15 the members of The Class as a whole.

16 **FIRST CAUSE OF ACTION**

17 **Negligent Violations of the Telephone Consumer Protection Act**

18 **47 U.S.C. §227 et seq.**

19 **By Plaintiff and The Class Against Defendant**

20 40. Plaintiff repeats and incorporates by reference into this cause of
21 action the allegations set forth above at Paragraphs 1-39.

22 41. The foregoing acts and omissions of Defendant constitute numerous
23 and multiple negligent violations of the TCPA, including but not limited to each
24 and every one of the above cited provisions of *47 U.S.C. § 227 et seq.*

25 42. As a result of Defendant's negligent violations of *47 U.S.C. § 227 et*
26 *seq.*, Plaintiff and the Class Members are entitled an award of \$500.00 in statutory
27 damages, for each and every violation, pursuant to *47 U.S.C. § 227(b)(3)(B)*.

28 43. Plaintiff and the Class members are also entitled to and seek

1 injunctive relief prohibiting such conduct in the future.

2 **SECOND CAUSE OF ACTION**

3 **Knowing and/or Willful Violations of the Telephone Consumer Protection**
4 **Act**

5 **47 U.S.C. §227 et seq.**

6 **By Plaintiff and The Class Against Defendant**

7 44. Plaintiff repeats and incorporates by reference into this cause of
8 action the allegations set forth above at Paragraphs 1-39.

9 45. The foregoing acts and omissions of Defendant constitute numerous
10 and multiple knowing and/or willful violations of the TCPA, including but not
11 limited to each and every one of the above cited provisions of *47 U.S.C. § 227 et*
12 *seq.*

13 46. As a result of Defendant's knowing and/or willful violations of *47*
14 *U.S.C. § 227 et seq.*, Plaintiff and the Class members are entitled an award of
15 \$1,500.00 in statutory damages, for each and every violation, pursuant to *47 U.S.C.*
16 *§ 227(b)(3)(B)* and *47 U.S.C. § 227(b)(3)(C)*.

17 47. Plaintiff and the Class members are also entitled to and seek
18 injunctive relief prohibiting such conduct in the future.

19 **THIRD CAUSE OF ACTION**

20 **Violations of the Rosenthal Fair Debt Collection Practices Act**

21 **Cal. Civ. Code § 1788 et seq.**

22 **By Plaintiff, Individually, Against Defendant**

23
24 48. Plaintiff repeats and reincorporates by reference into this cause of
25 action allegations set forth above at paragraphs 1-28.

26 49. To the extent that Defendant's actions, counted above, violated the
27 RFDCPA, those actions were done knowingly and willfully.
28

PRAYER FOR RELIEF

WHEREFORE, Plaintiff requests judgment against Defendant for the following:

FIRST CAUSE OF ACTION

Negligent Violations of the Telephone Consumer Protection Act

47 U.S.C. §227 et seq.

- As a result of Defendant's negligent violations of 47 U.S.C. §227(b)(1), Plaintiff and the Class members are entitled to and request \$500 in statutory damages, for each and every violation, pursuant to 47 U.S.C. 227(b)(3)(B).
- Any and all other relief that the Court deems just and proper.

SECOND CAUSE OF ACTION

Knowing and/or Willful Violations of the Telephone Consumer Protection Act

47 U.S.C. §227 et seq.

- As a result of Defendant's willful and/or knowing violations of 47 U.S.C. §227(b)(1), Plaintiff and the Class members are entitled to and request treble damages, as provided by statute, up to \$1,500, for each and every violation, pursuant to 47 U.S.C. §227(b)(3)(B) and 47 U.S.C. §227(b)(3)(C).
- Any and all other relief that the Court deems just and proper.

THIRD CAUSE OF ACTION

Violations of the Rosenthal Fair Debt Collection Practices Act

Cal. Civ. Code § 1788 et seq.

WHEREFORE, Plaintiff respectfully prays that judgment be entered against Defendant for the following:

- A. Actual damages;
- B. Statutory damages for willful and negligent violations;
- C. Costs and reasonable attorney's fees;
- D. For such other and further relief as may be just and proper.

TRIAL BY JURY

50. Pursuant to the seventh amendment to the Constitution of the United States of America, Plaintiff is entitled to, and demands, a trial by jury.

Respectfully submitted this 9th day of March, 2017.

LAW OFFICES OF TODD M. FRIEDMAN, P.C.

By: /s/ Todd M. Friedman
Todd M. Friedman
Law Offices of Todd M. Friedman
Attorney for Plaintiff